IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 400/2007
(Vardichand V/s State of Rajasthan)

Date of Order : 17/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Chaitanya Gehlot, for the petitioner.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 22.6.2006 passed by Additional Sessions Judge (Fast Track), Rajsamand (for short 'the appellate court' hereinafter) in Criminal Appeal No. 42/2006 filed by the petitioner against the judgment and order dated 18.11.2004 passed by Chief Judicial Magistrate, Rajsamand (for short 'the trial court' hereinafter) in Criminal Regular Case No. 68/2000.

Heard learned counsel for the petitioner. Perused the orders passed by the courts below.

Before the appellate court, the petitioner did not

challenge his conviction and only prayed for releasing him under Section 4 of the Probation of Offenders Act, 1958 (for short 'the Act' hereinafter) instead of sentencing him at once to any imprisonment. The appellate court accepted the request of the petitioner and while maintaining the conviction, instead of sentencing the petitioner at once to any imprisonment, he was extended the benefit of Section 4 of the Act.

By this petition, the petitioner claims the release of the food grains which is subject matter of the offence along with the gunny bags in which the wheat weighing 62 quintals were seized by the Enforcement Officer.

In my view, when it is established that the wheat in question was subject matter of the offence, the petitioner is not entitled for the custody of the same. Faced with this situation, learned counsel for the petitioner submits that so far as the gunny bags are concerned, at least the petitioner is entitled to get the empty bags. Be that as it may. The matter is of 2004 and in my view it is not a fit case warranting exercise of extra-ordinary powers under Section 482 Cr.P.C.

No case for interference is made out. The criminal misc. petition is therefore, dismissed.

(H.R.PANWAR),J.

rp